IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 249 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

@

VIRABHAI DHULABHAI MARWADI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 249 of 2002

MR PRAFULL K PATHAK for Petitioner No. 1-4

MR DESAI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 11/09/2002

ORAL JUDGEMENT

By this revision application, the revisioners challenge the order of learned Additional Sessions Judge,

Sabarkantha at Modassa Camp, passed on May, 11, 2002 in Criminal Appeal No. 9/2001. The said appeal arose from judgement and order of Learned Judicial Magistrate First Class, Modassa in Criminal Case No. 436/92 convicting the revisioners for offences punishable under Sections 325, read with Section 114 of IPC and sentencing them to undergo RI for two years and to pay a fine of Rs. 350/- each, in default to undergo RI for one month. The trial Court also convicted the revisioners for offences punishable under Section 504, read with Section 114 of IPC and sentenced to undergo SI for 3 months.

2. The Sessions Court partially accepted the appeal and confirmed the order qua revisioner No.2, whereas set aside the order of learned Magistrate qua revisioner Nos. 1, 3 and 4 and convicted them for offences punishable under Section 324 of IPC and sentenced them to undergo RI for one year and to pay a fine of Rs. 100/- each, in default to undergo SI for 7 days. The conviction under Section 504 read with Sec. 114 of the Act was confirmed against each of the revisioners. Aggrieved by the said judgement and order of the Sessions Court, present revision is preferred.

3. The facts of the case can be stated in brief thus:

3.1 On 21st Sept. 1991 at about 14.00 hours, revisioner No.4 made certain remarks in respect of wife of witness No.8. He was asked not to do so. Therefore, revisioner No.4 started abusing witness No.8. In the meanwhile, revisioner Nos. 1, 2 and 3 arrived there armed with dharia, knife and a pair of scissors and assaulted witness No.8 and caused injuries to him on the neck, back and the head. They also gave abuses to them. Complaint was lodged, investigated and charge-sheet filed. After the trial, considering the evidence led by the prosecution, conviction was recorded by the learned Magistrate as stated above, followed by partial confirmation by the Sessions Court.

4. Learned Advocate Mr. P.K. Pathak had submitted before this Court earlier (Coram: D.H.Waghela, J.) that he does not press this revision on merits of conviction, but press for grant of benefit of probation under the provisions of Probation of Offenders Act and accordingly a report from the Probation Officer was called for, which is before this Court.

Learned Advocate Mr. Pathak today also submitted that the revisioners may be granted benefit of the

Probation of Offenders Act, in view of the fact that all of them are poor persons earning their liveli-hood on labour work, they have large families to support, they have no criminal antecedents, the incident occured all of a sudden without any pre-meditation and the revisioners are repending for what has happened. Mr. Pathak submitted that if they are granted the benefit of the Probation of Offenders Act, the revisioners would improve their conduct and their young children and family members would not be deprived of a shelter and livelihood. Learned Advocate Mr. Pathak also submits on instructions from his client that in order to indicate the genuineness of repentence of the revisioners, the revisioners undertake to keep away from Bayad town for a period of six months from their release. He therefore urged that the benefit may be granted.

5. This Court has gone through the report of the Chief Officer, Probation of Offenders Act, Himmatnagar in respect of the revisioners. In substance the report indicates that none of the revisioners have any criminal antecedents. Their conduct has been consistently good with the family members as well as their neighbour. The incident probably occurred on impulse and a positive opinion is expressed that if they are given benefit of probation, they may improve and their future may be bright.

6. The revisioners are in jail since 11.12.2001. In view of the report of the Probation Officer and in absence of anything adverse against them, and in light of the assurance given by learned Advocate Mr. Pathak on instructions from his client to keep away the revisioners from Bayad town for a period of six months from their release, this Court is inclined to grant the benefit of the provisions of Probation of Offenders Act. Hence, following order:-

ORDER

The order of conviction by the Judicial Magistrate First Class, Camp Bayad in Criminal Case No. 436/92, as confirmed by the learned Additional Sessions Judge, Sabarkantha at Modassa Camp, vide judgement and order passed on May, 11, 2002 in Criminal Appeal No. 9/2001 is confirmed. However, the sentence in respect of revisioners is suspended. Revisioners Nos. 1 to 4 Virabhai Dhulabhai Marwadi, Ranchhodbhai Dhulabhai Marwadi, Rajubhai Dhulabhai Marwadi and Babubhai Dhulabhai Marwadi shall be released from jail on their executing a bond of Rs. 5,000/- only for good conduct

for a period of one year with surety each of the like amount and to appear and receive the sentence when called upon during this period of one year. Revisioners in the meantime shall keep peace and be of good behaviour. The fine if paid be refunded to them. In event they are found to commit breach of the bond, the sentence will become operative and revisioners will be liable to the subjected to undergo the sentence imposed on them. Rule is made absolute in the aforesaid extent accordingly. This revision is accordingly disposed of. Direct service permitted.

(A.L.Dave, J.)

*/Mohandas